

DSHS HIPAA Privacy Rule Requirement Worksheet

1. Requirement Number: #8.6

2. Date: November 28, 2001 (Revised 9/26/02)

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Title: DSHS Privacy Officer

4. Requirement Title: Determine Privacy Notice Requirements

5. CFR Citation: 45 CFR §164.520 - Notice of Privacy Practices for PHI

6. Requirement: *(Provide a clear definition of the requirement as it applies to DSHS)*

Introduction:

With certain limited exceptions, an individual has a right to adequate notice of the uses and disclosures of protected health information (PHI) that may be made by a covered entity (health plan, health care provider, or health care clearinghouse) and of the individual's rights and the covered entity's legal duties with respect to PHI. The limited exceptions are:

- a) A limited exception to this notice exists for group health plans. A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and does not create or receive PHI other than summary health information or information regarding an individual's participation, enrollment or disenrollment from a health insurance issuer or HMO offered by the plan, is not required to maintain or provide a Notice of Privacy Practices (notice).
- b) Another limited exception pertains to inmates. Inmates do not have a right to a notice of privacy practices, nor do the privacy notice requirements apply to a covered entity that is a correctional institution.

Content of the Notice:

A notice must be written in plain language and contain the following elements:

1. A header prominently displaying

“THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.”

2. Use and Disclosure

In terms of uses and disclosures of information, a covered entity's notice must contain:

- a) A description of the types of uses and disclosures that may be made for treatment, payment, and health care operations. The covered entity must include at least one example for each type of use and disclosure. In addition, if the covered entity engages in the following activities, it must provide a separate statement that:
 - 1. Indicates the covered entity may contact the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services of interest to the individual; or
 - 2. Indicates the covered entity may contact the individual to raise funds for the covered entity; or
 - 3. A group health plan, or a health insurance issuer or HMO with respect to a group health plan, may disclose PHI to the sponsor of the plan.
- b) A description of the types of uses and disclosures of information that may be made without the individual's written consent or authorization.
- c) A description of the more stringent law, if a use or disclosure is prohibited or materially limited by the law and use or disclosure is:
 - 1. For treatment, payment, healthcare operations,
 - 2. For permissions without consent or authorization, or
 - 3. Required by law

Detailed descriptions of use and disclosure of the stricter law on the notice so an individual knows what uses and disclosures are permitted by the privacy rule or other stricter law.

- d) A statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization at any time upon giving written notice of the revocation, except to the extent that a covered entity has already taken action on authorization.

3. *Individual Rights*

The notice must contain a statement of the individual's rights with respect to PHI and a brief description of how the individual may exercise these rights. The individual rights are:

- b) The right to access (inspect) and copy PHI;
- c) The right to amend PHI;

- d) The right to request restrictions on certain uses and disclosures of PHI including a statement that the covered entity is not required to agree to a requested restriction;
- e) The right to receive confidential communications of PHI;
- f) The right to receive an accounting of disclosures of PHI;
- g) An individual, who agrees to receive the privacy notice electronically, also has the right to receive a paper copy of the notice upon request.

4. *Covered Entity's Duties*

- a) A statement that the covered entity is required by law to maintain the privacy of protected health information and to provide individuals with notice of its legal duties and privacy practices with respect to such information;
- b) A statement that the covered entity is required to comply with the current notice;
- c) If a covered entity chooses to limit the uses and disclosures of information, it may describe such limited uses or disclosures in its notice, provided that the covered entity does not include any limitation that would affect its to use or disclose information as required by law.
- d) If a covered entity chooses to include a limitation provision in its notice, then the covered entity must include a statement reserving their right to change the limitations in the notice, and to make the new provisions effective for all PHI.
- e) The notice must also include a statement describing how the covered entity will provide individuals with the revised notice.
- f) If a covered entity does not reserve their right to change the limitations in the notice, then any subsequent changes made to the notice do not apply to information created or received prior to issuing the revised notice.

5. *Complaints*

- a) A statement that individuals may complain to the covered entity and to the Secretary of the Department of Health and Human Services if they believe their privacy rights have been violated;
- b) A brief description of how the individual may file a complaint with the covered entity; and
- c) A statement that the individual will not be retaliated against for filing a complaint.

6. *Contact for Privacy Information*

The privacy notice must contain the name, or title, and telephone number of a person or office to contact for further information.

7. *Effective Date*

The privacy notice must contain the date on which the privacy notice is first in effect, which may not be earlier than the date on which it is printed or published.

Revisions to the Notice:

The covered entity must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice.

Dissemination and Publication of the Notice:

A covered entity that is a health plan must provide notice:

- a) To the individuals covered by the plan, no later than the compliance date for the health plan;
- b) For new enrollees, at the time of enrollment; and
- c) To the individuals covered by the plan, within 60 days of a material revision to the notice.

The health plan must notify individuals then covered by the plan of the availability of the notice and how to obtain the notice, at least once every three years.

If a health plan has more than one notice, it satisfies the notice requirements of the rule by providing the notice that is relevant to the individual or other person requesting the notice.

Provider Relationship:

A covered entity with a direct treatment relationship to any individual must:

- 1.a) Provide the notice no later than the date of the first service delivery, (including service delivered electronically) after the compliance date; or
- 1.b) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.
- 2. Make a good faith effort to obtain a written acknowledgement of receipt of the notice of privacy practices, and if not obtained, document its good faith efforts to obtain the acknowledgement and the reason why the acknowledgement was not obtained except in emergency situations.

3. If the covered health care provider maintains a physical service delivery site, have the notice available for individuals to take with them, and post the notice in a clear and prominent location where individuals will be able to see and read the notice;
4. Upon revision, make the notice available upon request on or after the effective date of the revision.

A covered entity that maintains a web site that provides information about the covered entity's customer services or benefits must prominently post its notice on the web site and make the notice available electronically through the web site.

A covered entity may provide the notice to an individual by e-mail, if the individual agrees to the electronic notice (no formal written agreement is required). If the covered entity knows that the e-mail transmission has failed, then a paper copy of the notice must be provided to the individual. Providing electronic notice satisfies the notice provision requirements of this rule. If the first service of delivery to an individual is delivered electronically, the covered health care provider must provide electronic notice automatically and contemporaneously in response to the individual's first request for service.

An individual who receives an electronic notice still has the right to obtain a paper copy of the notice from the covered entity upon request.

For covered entities that do not have a direct treatment relationship with individuals, such as clinical laboratories, notices may be available to individuals upon request or distributed through other entities with direct treatment relationships.

Joint Notice by Separate Covered Entities:

Covered entities that participate in organized health care arrangements may provide a joint notice, if:

- a) The covered entities agree to abide by the terms of the notice as part of its participation in the organized health care arrangement;
- b) The joint notice meets the above stated implementation tasks and reflects the fact that the notice covers more than one entity;
- c) The joint notice describes, with reasonable specificity, the covered entities and the service delivery sites to which the notice applies; and
- d) States, if applicable, that the covered entities will share information with each other as necessary to carry out treatment, payment, health care operations relating to the organized health care arrangement.

Provision of a joint notice to an individual by any one of the covered entities satisfies the dissemination requirements with respect to all others covered by the joint notice.

Documentation:

A covered entity must document compliance with the notice requirements by retaining:

- a) copies of the privacy notices it issues for at least six (6) years; and
- b) any written acknowledgements of receipt of the notice or documentation of good faith efforts to obtain the written acknowledgement according to this section of the rule, if applicable.

7. Reporter:

Administration/Division/Office/Program:

8: Date:

9. How do things happen now? (Provide a detailed description of the current policy, process and/or practice relating to this requirement. If there is none indicate that. Include system functionality if it is a part of the process or practice. Identify whether the HIPAA privacy rule preempts state law.)

10. Describe what needs to happen in the future: (This section should include a detailed description of the new or changed policies, processes or practices required to be implemented to meet the HIPAA Privacy requirements. If possible, provide detailed examples of how the change(s) will effect various case situations. This section should also include descriptions of other new/changed items such as forms, reports, interfaces, system changes, etc.)

11. How will this be implemented? (Describe implementation plans for new or change policies, processes and/or practices to be implemented, including information about conversion and piloting new/changed practices and processes.)

12. If required changes depend upon a decision or decisions that have not been made, please specify:

Describe the decision(s) that must be made:

When do you anticipate that this decision will be made? ____/____/____